

In the matter, on the Commission's own motion, )  
to consider Ameritech Michigan's compliance )  
with the competitive checklist in Section 271 ) No. U - 11104  
of the Telecommunications Act of 1996 )

**STATE OF ILLINOIS     )**  
                                     **)     ss.**  
**COUNTY OF COOK     )**

1. My name is William G. Lester. My business address is 1 Oak Way, Berkeley Heights, New Jersey 07922-2724. I am employed by AT&T Corp. as a Manager in the Local Infrastructure and Access Management Organization. In that capacity, I am responsible for providing corporate support to AT&T's regional management for

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right-of-way planning and route design of AT&T's outside plant infrastructure in several Midwestern states, including the state of Michigan.

2. My educational background, work experience and qualifications regarding the matters in this affidavit are as follows. I attended the New Jersey Institute of Technology (formerly Newark College of Engineering) from 1969 to 1972, and pursued a degree in Electrical Engineering. I then transferred to Southern Illinois University where I received a Bachelors of Arts degree in Design Science in 1974. For the next twenty years I was employed in the cable television industry in various aspects of outside plant engineering and construction as well as video and audio systems engineering. This experience included both "hands on" field experience as well as the management of field operations, television production engineering and, eventually, an assignment as general manager of an urban cable television system. In 1995, I joined AT&T in my present capacity.

3. The purpose of my testimony is to discuss a new entrant's requirements for nondiscriminatory access to the network distribution structure owned or controlled by Ameritech. I will provide an overview of the issues relating to poles, ducts, conduits and rights-of-way including the requirement for nondiscriminatory access to these

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essential facilities as one of the items which must exist in fact, rather than in theory, before Ameritech could satisfy the requirements of the competitive checklist under Section 271(c)(2)(B)(iii) of the Telecommunications Act of 1996 ("the Act"). The remainder of my testimony outlines procedures and information which a new entrant would need in order efficiently and cost effectively to construct a facilities-based interconnected local network and why Ameritech's assertion that it provides access to poles, ducts, conduits and rights-of-way it owns or controls falls far short of the statutory mark.

4. One of the main problems with Ameritech's documentation is that it constantly refers to ill-defined procedures for obtaining access to its rights-of-way which will exist at some unspecified time in the future. This lack of specificity will likely lead to inordinate delays and unending disputes (and the further delays such disputes will entail) and severely constrain any new entrant's ability to design and construct its network facilities in a reasonable, rational and timely manner. Any such delays will benefit Ameritech by preventing the development of competitive facilities.

5. In the context of the access requirements under the federal Act, "poles, ducts, conduits and rights-of-way" should include entrance facilities, riser space in buildings,

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the "strip" of land over or through which poles, conduit, buried cable, or other network distribution facilities are located and land planned or suitable for use for new conduit, manholes, controlled environment vaults, pedestals and the other telecommunication facilities a new entrant may need to place in order to efficiently "piggyback" along the distribution network of Ameritech. This encompasses all poles, ducts, conduits, rights-of-way, and other paths used for network distribution facilities in whatever physical form they take. They may also include telephone equipment closets; remote terminal equipment buildings, huts or enclosures; cross-connect cabinets, panels or boxes; equipment cabinets, pedestals or terminals; and any other infrastructure used to place telecommunications facilities. Ameritech typically uses the term "structure" to refer to the network distribution facilities it is willing to make available to new entrants.

6. A broad, common-sense definition of poles, ducts, conduits and rights of way is necessary for the competitive market for local exchange telecommunications services to develop beyond the resale stage. In order to foster facilities-based competition, new entrants must be able to deploy their own facilities in order to reach potential customers throughout their service territory. In order to do so, new entrants must have access to all incumbent local exchange carrier network distribution facilities on a nondiscriminatory basis. The terms by which such access to poles, ducts, conduits and

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rights-of-way will be provided stand as one of the key issues to be resolved in the transition to a competitive local telecommunications market.

7. As a long distance provider, AT&T has had only infrequent need to access the poles, ducts, conduit and rights-of-way of the local network owned by an incumbent LEC, such as Ameritech. When it did, it was usually in connection with linking its long distance switching centers to local switching offices. Structures that are involved in bringing network facilities directly to customers, such as entrance facilities to buildings, cross connect cabinets, equipment rooms and pedestals were not required since access to customers was purchased by the long distance carrier from the incumbent local exchange carrier as carrier access services. However, as new entrants seek to compete with incumbents such as Ameritech access to additional structure will be necessary for this facilities-based local service. Complete duplication of existing distribution facilities for each new entrant's network is not cost effective and would be a huge obstacle to competitive entry; nor is it practical in areas where there is limited room in available rights-of-way for the placement of new conduit, ducts and poles. Even if possible, the public will be likely to accept only so much disruption to their streets and thoroughfares for competitors to construct separate pathways or local distribution structure. To maximize competitive opportunities, then, it is essential that all necessary

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structures be available on a non-discriminatory basis to all competing telecommunications providers.

8. My definition of the terms poles, ducts, conduits and rights of way, or "structures," as Ameritech refers to them, is consistent with the Act and the FCC's Order. Although the FCC did not expressly define the terms "poles, ducts, conduits and rights-of-way," in its August 8, 1996, Order, that Order did provide a very specific benchmark for addressing this issue when it stated that "the intent of Congress in section 224(f) was to permit ... telecommunications carriers to 'piggyback' along distribution networks owned and controlled by utilities." Further, the FCC stated that the directive of section 224(f)(1) of the Act "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields (FCC Order at ¶1123). AT&T's position regarding access to distribution network structures and the property upon which they are located is consistent with the Act's intent and the FCC's interpretation.

9. Section 251(b)(4) of the Federal Act imposes on Ameritech the "duty to afford access to the poles, ducts, conduits, and rights-of-way ... to competing providers of

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telecommunications services on rates, terms, and conditions that are consistent with Section 224." Section 224 in turn provides that a utility such as Ameritech "shall provide ... any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it, on the same terms and conditions as the utility provides to itself or its affiliates." The competitive checklist of Section 271 requires that access be provided by the regional Bell operating company in accordance with the requirements of Section 224 at just and reasonable rates. Thus, the Act establishes a strict and comprehensive nondiscrimination standard and requires that such access be provided to other telecommunications providers even in the absence of any ongoing interconnection contract between Ameritech and the attaching party.

10. The FCC rules have explained the non-discriminatory standard and given some specific guidance on what must be done to meet it. If Ameritech denies access, it must give a detailed written explanation of the reasons for the denial within 45 days. If the capacity of the Ameritech structure is not sufficient to grant access, Ameritech must take all reasonable steps to create additional capacity, including modifying the structure or even acquiring additional right-of-way through condemnation proceedings if it has the legal ability to do so. Finally, the rules make it clear that Ameritech must treat itself and its affiliates no more favorably than it treats new entrants.

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11. The common usage of the term "right-of-way", and the context within which it is used in both the Act and the FCC's order and rules governing access is the land upon, over, or through which telephone lines and other network distribution facilities pass or are located. Typically this includes the right to use land or other property to place poles, conduits, cables and other structures or equipment, or to provide passage to access such structures and equipment. The term "right-of-way" is not limited to specific legal interests in the underlying land itself. It includes all easements, licenses, leases or other permissions, obtained from either public or private third parties by the incumbent LEC as well as land or other property owned or leased by an incumbent telecommunications carrier and used, planned for use, or suitable for use for network distribution facilities. A "right-of-way" may run under, on, or above public or private property (including air space above public or private property). It also includes the right to use discrete spaces in buildings, building complexes or other locations. As I will discuss later, only this common usage of the term "right of way" is compatible with the practical implementation of the access requirements of the competitive checklist. Nevertheless, Ameritech has taken the position in arbitrations regarding local interconnection that the term should be construed in an extremely narrow fashion. Ameritech has argued, for example, that rights of way should be limited to property owned by third parties, not



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property that Ameritech owns. Thus, while paying lip service to the concept of equal access, Ameritech is setting up a battlefield for competition where it, with its existing network already in place and under its control, will be able to control the critical passes.

12. Ameritech's narrow definition of rights of way already has been determined to be unduly limited in Michigan. The Arbitration Panel in Michigan found Ameritech's position to be inconsistent with both Michigan law regarding the definition of a right-of-way and federal law regarding the access requirements under Section 224(f) of the Act. The panel noted if Ameritech's definition were accepted, Ameritech could deny a new entrant the right to bury cable adjacent to Ameritech's own cable due to the fact that Ameritech owned the underlying property. That decision was issued on October 28, 1996 in MPSC Case Nos. U-11151/11152. Ameritech objected to the panel's ruling on this matter, but the Commission held that an entrant may have access to rights of way on property owned or controlled by Ameritech. Order of November 26, 1996 in MPSC Case Nos. U-11151/U-11152.

13. The arbitrator of the interconnection agreement between AT&T and Ameritech in Illinois also rejected the narrow and limited definition of a right-of-way advocated by Ameritech. Specifically, the arbitrator ruled that Ameritech could not exclude AT&T

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from using right-of-way in cases where Ameritech owned the underlying property outright rather than as an easement or license in property owned by a third party. Similarly, the Indiana Utility Regulatory Commission required Ameritech to grant AT&T access to property owned by Ameritech for purposes of rights of way. Decision of November 27, 1996, Cause No. 40571-INT-01.

14. Certain other terms are relevant to a full understanding of a new entrant's requirements, and an incumbent LEC's responsibilities, regarding nondiscriminatory to network distribution structure. These included "attachments," "conduit," and "make ready work." "Attachments" are broadly defined to mean telecommunications equipment and related facilities. They include items such as mechanical hardware, grounding and transmission cable, and equipment boxes attached to a utility pole, placed in conduit, innerduct, manholes and other similar structures, or, in some cases in riser space or other above ground locations. Attachments may also involve usage of the ground itself for burying cable or placing other structures on or in the right-of-way.

15. The term "conduit" refers to protected tubing or piping constructed of metal, cement or plastic, which is used to house communications or electrical cables. While it is usually below ground, it can be above ground (e.g. inside buildings) and may contain

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one or more inner ducts for the placement of cable. Conduit systems involve any combination of reinforced passage or opening in, on, under or through the ground or a structure capable of containing communications facilities, but not limited to: main conduit and innerduct; laterals to poles and into buildings; building entrance ducts and conduit; conduit or riser space in third party buildings, which are owned or controlled by the incumbent telecommunications provider; conduit or ducts connecting central office cable vaults and entrance facilities; as well as conduit connecting manholes. Conduit systems are found within cities, under road and rail crossings, under rivers and streams, and in other locations where repeated excavation for maintenance or replacement of cable facilities is not desired or where added protection for the cables is needed. It is important to note that in many areas underground telephone cables are simply buried in trenches dug in the right of way itself and are not enclosed within conduit or attached to poles. Thus access to conduit itself may not be of any value in areas where the existing telephone distribution facilities consist of cable buried in the right-of-way.

16. "Make ready work" is the work necessary to prepare, provision and where necessary, modify pathway facilities to create additional capacity. Generally, this work includes, but is not limited to, inspections, rodding, swabbing, placement and removal

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of innerduct and/or cable, rearrangement or transfer of existing facilities, and any other changes or improvements required to accommodate the placement of the attaching party's facilities. In the case of rights of way, it may include trenching and other work to build new conduit, new manholes, controlled environment vaults and other facilities to be used to house the new entrant's distribution facilities or in some cases, to simply bury new underground cable.

17. The Commission cannot conclude that Ameritech has satisfied the Act's requirement that it make access to rights of way and other pathway facilities available from previous practice. For the reasons I discuss below, only a review of Ameritech's actual performance in responding to requests for access to local facilities will reveal whether Ameritech will satisfy the competitive checklist in this regard. In the past, incumbent LECs such as Ameritech have traditionally shared access to each other's pathway facilities when engaged in the provision of joint service (e.g., when neighboring telephone companies provide extended area service), or in the provision of public utility service, as when an electric company shares access to its poles with the telephone company. Incumbent LECs have also occasionally granted access to their distribution facilities to interexchange carriers operating in their serving territories. The

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mechanisms historically used for such limited access have little or no bearing on the issue of the competitive checklist.

18. Now that implementation of reasonable and nondiscriminatory access to these facilities by new local exchange carriers has become the subject of considerable discussion during the transition from a monopoly to a competitive environment in the local exchange, it is necessary to see what really happens on a day-to-day basis. The practical impact of delays or disputes over the granting of access will, by their very nature, have a tendency to impede the ability of new providers to enter the market. Given Ameritech's narrow, and now rejected, view of the extent of its duties under the federal Act and the efforts it has made to impose as many hurdles as possible to effective use of its distribution facilities, it cannot be assumed that its promises of access will become fact. Thus, until such time as the new entrants are actually able to use existing Ameritech distribution facilities, including its rights-of-way, to deploy their own networks, and new entrants are able to actually use those networks to provide widespread competition to Ameritech, the effect of Ameritech's proposals governing access will remain untested. In the absence of such "field testing," Ameritech will not be able to establish to the Commission that it has met the competitive checklist with respect to this item.

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19. Under these circumstances, the Commission will not be able to determine if Ameritech has satisfied the competitive checklist until it satisfied that Ameritech's actual performance measures up to the requirements of the law. Ameritech must demonstrate that it is consistently responding to requests within the 45 days time period set by the FCC rules. Ameritech must demonstrate that it is, on a regular and consistent basis, actually taking all reasonable steps to make access available, including making modifications to its poles, conduits, ducts and rights-of-way were necessary to create additional capacity. Mere promises to create a process for handling access is insufficient to demonstrate compliance. Rather, the "proof is in the pudding." Ameritech must demonstrate that it is, in fact, granting access in a non-discriminatory manner. The Commission will not be able to determine if there has been compliance with the competitive checklist on this subject until it is able to see how the process Ameritech is promising to implement works in practice. Only then will the Commission be able to decide if the process does provide access in the manner required by law.

20. Ameritech's current contracts do not necessarily provide a new entrant with the nondiscriminatory access to poles, ducts, conduits and rights of way that it will need to establish even a foothold in the local exchange market, let alone become an effective

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competitor to an incumbent LEC such as Ameritech. As I discuss below, certain contract provisions, such as undefined time frames for Ameritech to complete make ready work, could easily impede the ability of new entrants to offer consumers an efficient, high quality communications service alternative.

21. Ameritech's control of distribution structures constitutes a potential barrier to AT&T's entry into the local telecommunications market. As a traditional monopoly provider of telecommunications services, Ameritech has been able to obtain access to public and private corridors necessary for the construction of critical network facilities. These have been accumulated over decades under a monopoly environment, and they are an area of great advantage to Ameritech relative to new entrants. In fact, obtaining separate routes comparable to those of incumbent local exchange carriers will in most urban areas prove nearly impossible for new entrants. Consequently, effective, facilities-based competition can be either encouraged or impeded depending upon the quality of access obtained by new entrants to these essential facilities. If facilities-based competition is to develop, distribution facilities that Ameritech established in a monopoly environment must be shared equally by all providers of telecommunications services. Although Ameritech claims it will make equal access available, the interconnection agreement does not specify time frames for the performance of many of

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its duties. This failure to identify the time frames and "day-to-day" procedures applicable to access requests is remarkable in light of the fact that Ameritech has been under this statutory duty to provide access since the day the Act became law, over eight months ago. Ameritech's delay in specifying the practical means for other carriers to exercise their right to access and use Ameritech's distribution corridors and structures is indicative of the delays AT&T has experienced in its dealings with Ameritech in this area.

22. The effect of Ameritech's control of poles, conduits and other distribution facilities on the feasibility of deploying a local infrastructure is substantial and pervasive. For example, in many areas Ameritech owns, controls and maintains riser-cable duct, which is the only means other carriers have of gaining access to building tenants. The denial of access to these facilities (for example, by alleging "insufficient capacity") can make it impossible to serve large blocks of customers except through resale of Ameritech's services. Similarly, in the case of multiple dwelling units ("MDUs") where one or more tenants may want service from a new entrant, Ameritech can effectively deny access to those customers by refusing to provide space (both floor and wall space) in Ameritech's telephone closet or equipment room located in that building. In all such cases where Ameritech effectively controls access to customers



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through its control of the means of access, reasonable accommodations must be made to allow new entrants to utilize Ameritech distribution facilities to connect the new entrant's facilities to the customer. This will afford new entrants the opportunity to offer competitive alternatives.

23. In addition to controlling physical access to these facilities, Ameritech also has the ability to impede access through the imposition of unreasonable rates. Therefore, if a new entrant is to build a competing network and using existing rights-of-way and attachments to Ameritech's structures, Ameritech must be required to price access to those structures at cost-based rates. The prices Ameritech proposes to charge are still unclear (Interconnection Agreement, at § 16.18 "Ameritech's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the Act."). It also appears that Ameritech is claiming that it alone will determine the amount to be charged for the "one-time administration fee" imposed on each carrier seeking access to Ameritech structure, and for access to maps, the performance of make ready work and modifications. AT&T believes that charges for all aspects of access, including access to maps, drawings and engineering information, as well as all work necessary to make capacity available, should be established by the FCC or state commissions. Ameritech

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should not be placed in a position where it, alone, will decide what to charge for any portion of the access process since it has every reason in the world to seek to use such rates for its own competitive advantage and not merely to recoup its costs.

24. In order to ensure that the prices charged are nondiscriminatory and cost based, Ameritech should be required to supply cost data and information regarding imputation sufficient to demonstrate that, as the federal Act requires, the price charged to itself, and to any affiliates, is consistent with that charged to attaching parties. It is only through such a safeguard that new local exchange market entrants could hope to overcome the formidable obstacles that apply to them in obtaining access to pathway facilities.

25. AT&T must have access to full and complete information regarding pathway facilities to perform route planning for new telecommunication facilities. Route planning requires that engineers design a route by piecing together, segment by segment, available pathway segments owned and controlled by incumbent LECs such as Ameritech, in order to create a pathway to place new facilities to connect carrier's facilities and to connect to a customer. In order to accomplish this, engineers must have access to as much information regarding available pathway facilities as possible in order

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to select the most efficient route from all of the available segment options. A lack of access to full, reliable, accurate and timely information regarding pathway facilities will act as an impediment to AT&T in its attempt to enter the local exchange telecommunications market on a facilities basis.

26. The capital outlay associated with the deployment of new infrastructure to permit facilities based competition in the local exchange is enormous. In order to justify capital outlays of this magnitude from a business perspective, capital must be used in the most efficient and cost effective manner possible. A poorly engineered route may unnecessarily increase the mileage of cable used or complicate the method of construction and, therefore, require excessive capital outlays to reach the same customers that could have been reached by less expensive means.

27. Ameritech has historically refused to provide AT&T with access to facility route maps or other information necessary to plan the most efficient and cost effective network possible. Now Ameritech has agreed to provide maps which contain the location of conduits and poles, but states it will restrict information "beyond location and capacity" (Affidavit of John Mayer, p. 29). To the contrary, all of the information to which Ameritech's own route planners have access should be made equally available

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to new entrants. To the extent any truly proprietary information is involved, commercially reasonable confidentiality agreements restricting the use of such information to route planning and access-related uses can be adopted.

28. If Ameritech does not fully disclose complete information regarding existing infrastructure to new entrants' engineers, new entrants will be unable to consider all available route options. In AT&T's experience this has resulted in gaps in knowledge and delays in the selection of facilities available to AT&T which impacted AT&T's ability to plan its network in the most efficient and cost effective manner. Thus, a new entrant may incur substantial additional costs in building its network that could be avoided if its engineers and route planners have access to this additional information.

29. Under the federal rules, as I understand them, Ameritech is already under a duty to respond to any request for access within 45 days. However, while Ameritech's witness John Mayer references process steps Ameritech continues to develop in granting access, he does not state when these processes will be developed and in place. Nor does the interconnection agreement contain a list of process steps and time intervals required to complete them. Therefore, if a new entrant makes a request for access today, Ameritech has established no process to handle that request and respond within

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the 45 day time limit established by 47 CFR §1.403(b). Given the 45 day time limit established by the FCC to undertake all investigations necessary to determine whether to deny access, there is no legitimate reason not to provide maps and similar information regarding the availability, capacity and condition of conduit or pole attachments within five (5) business days after a request is made for that type of information. However, Ameritech does not state how long it will take before responding to a request for maps. Likewise, in order to meet the 45 day time limit for all responses, it would be reasonable for Ameritech to provide within ten (10) business days of an inquiry, for a physical examination of the conduit, manholes, poles and all attachments. Such an inspection is necessary to determine if there are safety or engineering issues or whether capacity must be expanded by modification to make access available and the examination at this stage gives sufficient time to explore all options for increasing capacity should that be necessary to make access available. During and after this period, Ameritech should be required to allow the requesting party's personnel to enter and inspect manholes or pole structures in order to confirm usability or assess the condition of the structure and to determine whether capacity can be expanded if necessary.

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30. The purpose of having defined process steps with established deadlines in place now, and not offered to be established at some future date is to insure that Ameritech's "promises" that it "will" implement a process do not remain just that, unfulfilled promises. Indeed, Ameritech proposes to have no deadlines for make ready work, stating instead that it will negotiate individual due dates on make ready jobs. (Affidavit of John Mayer, p. 32). Furthermore, unless the process steps for access are defined in specific terms approved by the Commission, Ameritech can unilaterally modify the process whenever it wishes, irrespective of the effect any such modifications to the process it ultimately may establish have on new entrants. AT&T's own experience with Ameritech is illustrative of what happens when Ameritech has no deadlines, but is free to define all the rules and change them at will.

31. AT&T has been dealing with Ameritech for many years in connection with long distance and has also been involved in requesting access in connection with its ongoing effort to build a local network in Illinois. In one situation, AT&T asked Ameritech for access to a specific section of conduit. AT&T was told that this segment of conduit was available and was given a price for the "make ready" costs. AT&T gave the go ahead to do the "make ready" work and paid the amount quoted by Ameritech in advance. AT&T was then given an available date for that section of conduit. However, a short

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time prior to the available date, Ameritech told AT&T that the section could not be made ready and was unavailable. As a result, AT&T was forced to re-initiate the process of securing alternative facilities for that segment of the route, at a significant time and cost penalty to AT&T.

32. In another instance, in connection with AT&T's efforts to build a fiber optic backbone ring in Illinois, AT&T has seen many instances where Ameritech's promised performance has not been anywhere near its actual performance. In certain areas, AT&T has sought access to Ameritech's facilities for portions of the project. Despite the fact that Ameritech has agreed to make access available, and has agreed to specific dates to finish the make ready work for identified segments of the project, Ameritech has been repeatedly late in delivering the facilities to AT&T. A delay of three or four months has not been uncommon and longer delays have occurred in some cases. The delays have impacted AT&T's ability to coordinate other aspects of the work necessary to build its facilities. Given Ameritech's performance in cases where it has agreed to meet a specific deadline, Ameritech's bare promise that it will make access available is not credible in the absence of existing process steps, standards to judge Ameritech's performance, and actual measurement of Ameritech's performance and should not serve as evidence that Ameritech has met a requirement of the competitive checklist.

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33. A final example, which illustrates an issue which could severely hamper a new entrant's ability to serve its customer, concerns the costs which Ameritech has sought to impose for access and use of distribution facilities. In certain instances, AT&T has applied for conduit and been given a "make ready" cost for a primary route. However, the cost was so high that it approached the costs of new construction. Thus, it would appear that Ameritech may have used the route selection process to attempt to reconstruct (at AT&T's expense) distribution facilities that Ameritech had allowed to fall into disrepair. Thus, the criteria by which Ameritech determines the amount of "make ready" work necessary and the costing methodology used in determining price quotes may be used by Ameritech to impose unnecessary costs on new entrants or to pass Ameritech's own maintenance and repair costs on to the new entrants under the guise of make ready work.

34. The Interconnection Agreement reserves to Ameritech the right to consider requests for interconnection of AT&T's attachments on Ameritech's structure with attachments of other attaching parties on a case-by-case basis (§ 16.20.2). Depending on whether Ameritech exercises its discretion in a nondiscriminatory manner, this contractual term could be implemented in a manner that frustrates competition. Only



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experience will demonstrate to the Commission whether Ameritech is providing access in the manner required by law.